IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1198 OF 2004

Mehboob Hanif Shikalgar .. Appellant

Versus

Ramzan Gulab Shikalgar .. Respondent

Mr.P.D.dalvi for appellant

Mr.N.J.Patil for respondent

CORAM : P.V.KAKADE,J.

DATE : 1st DECEMBER, 2004

P.C.:

1. The appellant-original plaintiff has preferred this appeal against the Order passed by Addl.District Judge, Kolhapur dated 30th July, 2004 allowing the appeal of the respondent and dismissing his suit which was earlier decreed by the lower court.

2. The plaintiff filed the suit to the effect that the

suit property was owned by him and the defendant was his real uncle. The Plaintiff's father died in the year 1978. The Plaintiff was doing work as Iron -smith with the defendant. There were cordial relations between the parties as there was no place to the defendant for tying his cattle, on his request the plaintiff gave the suit land to the defendant in the year 1979 only to tether the cattle on temporary basis. Thereafter the plaintiff demanded the possession of the said land about 10 years subsequently. However, defendant refused to hand over the possession. The plaintiff came to know that defendant had got entered his name in the record of rights and hence the suit came to be filed for possession of the property. The defendant challenged the suit on the ground that the suit property was agreed to be sold to him by the plaintiff under suit agreement dated 3.5.1979 for consideration of Rs.400/= and possession of the property was handed over to the defendant on the same day at the foot of the said agreement and on such other grounds the suit was sought to be dismissed with costs.

. The learned trial judge held that the plaintiff had proved that the defendant was his licensee and

therefore, he was entitled to recover the suit property. It was also held that the defendant had not proved his possession of the suit property on the basis of part performance of the contract dated 3.5.1979 and the suit came to be decreed. The appeal was carried to the District Court. The learned District Judge heard the appeal and allowed it dismissing the suit of the plaintiff. Hence the present appeal.

3. After hearing both the parties and perusing the record it is found that there is absolutely no substantial question of law involved in this appeal. It is to be noted that the plaintiff came with the case that there was no agreement between the parties to sale the suit property to the defendant and therefore, the foundation of the defendant has totally fallen. However, the state of affairs show that there was an agreement between the parties dated 3.5.1979 which has come on record. It is true that the plaintiff has denied his signature on the ground that it is a bogus document, however, the fact remains that the defendant has led sufficient evidence to establish that not only the agreement has been executed between the parties, but consideration of Rs.400/= also passed in presence of

witness Kulkarni. It was urged on behalf of the appellant that the protection contemplated by section 52A of the Transfer of Property Act would not be available to him, as the agreement to sell was not registered document. However, I prefer to disagree with this proposition. It is duly established that the suit agreement was executed between the parties on due consideration at the foot of which the possession was handed over to the defendant and therefore, he is entitled to protection for his possession by virtue of theory of part performance of contract. Be as it may, the fact remains that the record shows that the learned lower appellate court judge has rightly come to the conclusion that the plaintiff's suit for possession on the ground that the defendant is a licensee has no merits and I am not inclined to interfere with the said reasoning adopted by the Learned Appellate Court.

4. In the result the appeal stands dismissed in limine, as there is no substantial question of law involved therein.

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